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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1933**

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# No. 787

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ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO AND THE ACME STEEL COMPANY, APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA ET AL.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

---

## STATEMENT AS TO JURISDICTION ON APPEAL.

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The appellants, and each of them, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represent:

### (A) Statutory Provisions Sustaining Jurisdiction.

Section 47 of Title 28, United States Code Annotated, being Chapter 32, 38th Statute, 220, of October 20, 1913, provides for the bringing of an action to set aside, in whole

or in part, any order made or entered by the Interstate Commerce Commission of the United States in any District Court of the United States, and that when such application is presented to the Judge of such District Court he shall immediately call to his assistance to hear and determine the application two other judges. Said section further provides as follows:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply."

Section 238 of the Judicial Code of the United States, being Section 345 of Title 28, United States Code Annotated, provides as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections and not otherwise: * * *
>
> (4) So much of section 47 of this Title as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

**(B) Date of Decree and Date of Application for Appeal.**

The decree sought to be reviewed was entered on the 8th day of November, 1933.

The application for appeal is presented on the 16th day of November, 1933.

**(C) Nature of the Case and Ruling.**

The action was brought by the Illinois Commerce Commission, the Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and the Acme Steel Company, against the United States of America and the Alton Railroad Company and thirty-six other railroad common carriers, all operating within what is known as the Chicago switching district, as defendants, pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, *Switching Rates in the Chicago Switching District*, 195. I.C.C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission, or in any wise to alter, change, cancel or in any manner depart from the rates for switching service set forth in tariffs on file with the Illinois Commerce Commission for intrastate switching between points in the Chicago switching district in the state of Illinois, and/or on file with the Public Service Commission (of Indiana) for intrastate switching between points in the Chicago switching district in the state of Indiana, or to make any effort to modify or change said intrastate switching rates in order to comply with the requirements of the said order, and to set aside and hold for naught any and all acts of said defendants, or any of them, performed and done under or in alleged conformity with said order of the Interstate Commerce Commission dated July 3, 1933. The Interstate Commerce Commission, by intervening petition, was made a party defendant to said action. Answers were filed by

the United States of America, by the Interstate Commerce Commission, and by the thirty-seven railroad carrier defendants. Upon the issues thus joined a final hearing was had before a three-judge court, assembled by this court on the 13th day of October, 1933. The final order and decree of such three-judge court so assembled was rendered on the 8th day of November, 1933.

**(D) Cases Believed to Sustain Jurisdiction.**

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

*Merchants Warehouse Co.* v. *United States*, 283 U. S. 503, 75 L. Ed. 1227.

*Virginian Railway Co.* v. *United States*, 272 U. S. 658, 71 L. Ed. 463.

*Beaumont, Sour Lake & Western Railroad Co.* v. *United States*, 282 U. S. 92, 75 L. Ed. 221.

*New England Divisions Case*, 261 U. S. 184, 67 L. Ed. 605.

*Louisville & N. R. Co.* v. *United States*, 242 U. S. 60, 61 L. Ed. 152.

*Interstate Commerce Commission* v. *Union Pacific Ry. Co.*, 222 U. S. 541, 56 L. Ed. 308.

*Florida East Coast R. Co.* v. *United States*, 234 U. S. 167, 58 L. Ed. 1267.

*Manufacturers R. Co.* v. *United States*, 246 U. S. 457, 62 L. Ed. 831.

*Skinner & E. Corp.* v. *United States*, 249 U. S. 557, 63 L. Ed. 772.

*Seaboard Airline R. Co.* v. *United States*, 254 U. S. 57, 65 L. Ed. 129.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of

Section 238 of the Judicial Code and chapter 32 of the 38th Statute, 220, of October 20, 1913, being sections 345 and 47 of Title 28, United States Code Annotated, respectively.

Respectfully submitted,

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*Solicitors for Illinois Commerce Commission.*
PHILIP LUTZ, JR.,
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HERBERT J. PATRICK,
*Deputy Attorney General of Indiana,*
*Solicitors for Public Service Commission (of Indiana).*
HERBERT J. CAMPBELL,
*Solicitor for Board of Trade of the City of Chicago.*
LUTHER M. WALTER,
*Solicitor for Acme Steel Company.*

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CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

## No. 787

ILLINOIS COMMERCE COMMISSION, *et al.*,
*Appellants,*

*vs.*

THE UNITED STATES OF AMERICA, *et al.*,
*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

## MOTION TO ADVANCE

OTTO KERNER,
IRVIN ROOKS,
HARRY R. BOOTH,
PHILIP LUTZ, JR.,
HERBERT J. PATRICK,
HERBERT J. CAMPBELL,
LUTHER M. WALTER,
*Solicitors for Appellants.*

February 21, 1934.

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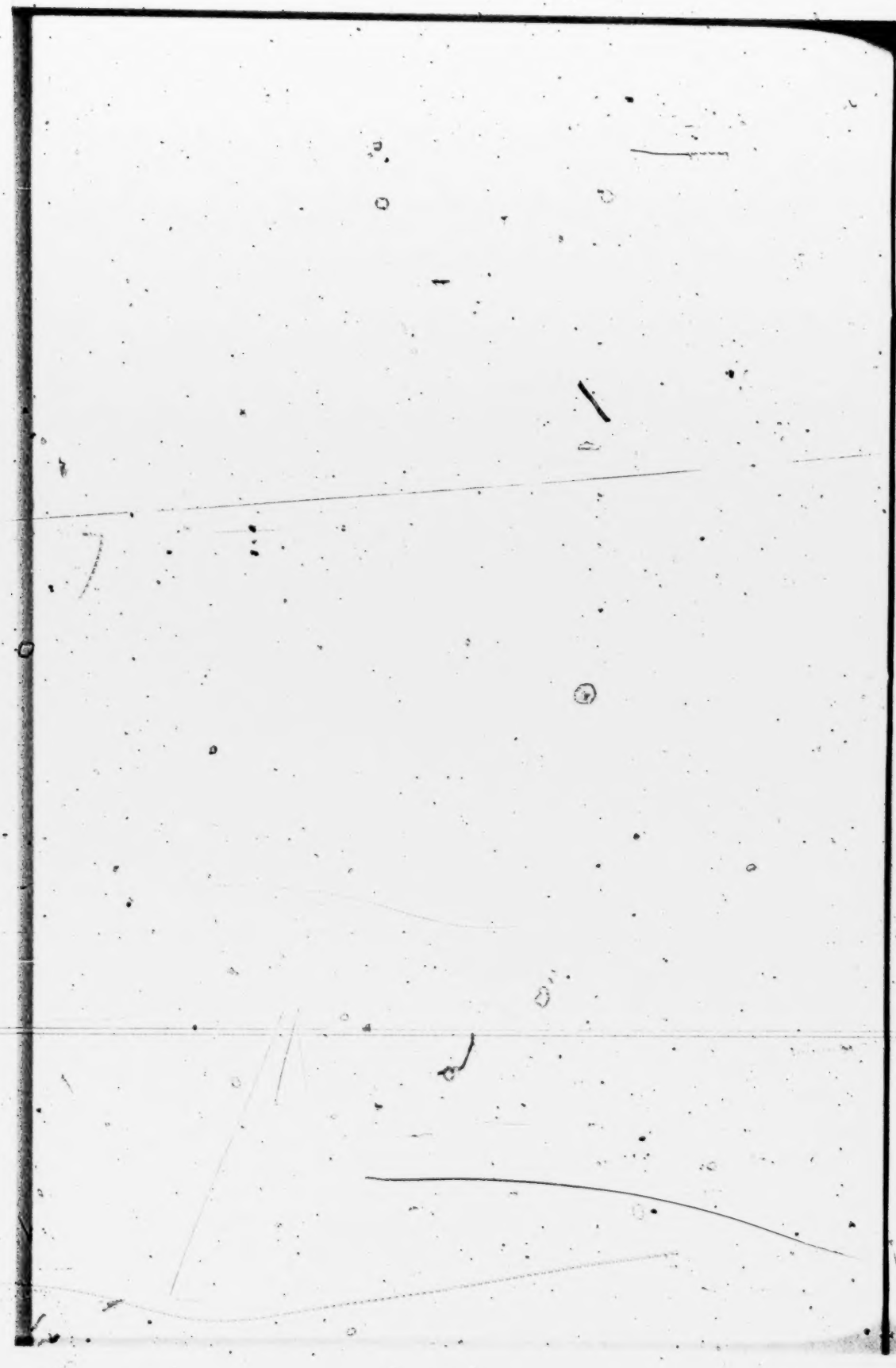

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# Supreme Court of the United States

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

---

## MOTION TO ADVANCE

Come now appellants, by their counsel, and respectfully move the court to advance this case for argument on an early day of the present term of this court after March 31, 1934, and in support of said motion show:

This is a suit by the Illinois Commerce Commission, the Public Service Commission (of Indiana) and Acme Steel Company, a shipper, to set aside the order of the Interstate Commerce Commission, dated July 3, 1933, entered in a proceeding before that Commission, entitled "Switching Rates in Chicago Switching District," 195 I. C. C. 89. By said order the Interstate Commerce Commission required rates and charges for intrastate switching of loaded cars in the Chicago switching district within the State of Illinois and within the State of Indiana to be not less than the rates contemporaneously applied on interstate switching of loaded cars between points in the Chicago switching district in Indiana and in Illinois.

A hearing was had before the District Court of the United States for the Eastern Division of the Northern District of Illinois, composed of Anderson, circuit judge, and Wilkerson and Barnes, district judges, and that court dismissed the bill of complaint.

Whether the Interstate Commerce Commission had the authority to make the order is the principal question involved in the case. The order of the Commission complained of deprives the Illinois Commerce Commission and the Public Service Commission of Indiana of any authority over intrastate rates applied by the railroad defendants to the movement of cars in switching service within their respective jurisdictions. The determination of the questions involved is of importance not only to the appellants but to the defendant rail carriers and the shippers they serve.

By Act of Congress of October 22, 1913 (Title 28, Section 47a, U. S. C. A.) priority in hearing and determination over all other causes except criminal causes is provided for appeals in this court of cases brought to enjoin, annul and set aside an order of the Interstate Commerce Commission.

We are authorized by counsel for all appellees to say that they concur in this motion to advance.

Respectfully submitted,

OTTO KERNER,
Attorney General of Illinois;
IRVIN ROOKS,
HARRY R. BOOTH,
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Solicitors for Illinois Commerce Commission.
PHILIP LUTZ, JR.,
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HERBERT J. CAMPBELL,
Solicitor for Board of Trade of the City of Chicago.
LUTHER M. WALTER,
Solicitor for Acme Steel Company.

February 21, 1934.